

SUMMONS

(CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):
METRO FUEL, LLC AND DOES 1 TO 10

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):
JOHN YUEN

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:
(El nombre y dirección de la corte es):

CASE NUMBER
(Número del caso): 008 - 08 - 476137

San Francisco Superior Court
400 McAllister Street
San Francisco, Ca. 94102

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

John J. Cullen, CSB# 42766, Law Offices of Cullen & Wood

490 - 2nd Street, Suite 300, San Francisco, Ca. 94107

Telephone: (415) 284-9271

Telephone: (415) 284-0237

DATE:

(Fecha) JUN 9 - 2008

GORDON PARK II, CRISTINA E. BAUTISTA

(Secretario)

, Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation)

☐ CCP 416.20 (defunct corporation)

☐ CCP 416.40 (association or partnership)

☐ other (specify):

4. ☐ by personal delivery on (date):

☐ CCP 416.60 (minor)

☐ CCP 416.70 (conservatee)

☐ CCP 416.90 (authorized person)

6/25/08
9:40AM

Code of Civil Procedure, § 425.12

PLD-C-001

SHORT TITLE: JOHN YUEN v. METRO FUEL, LLC	CASE NUMBER:
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4. (Continued)

b. The true names of defendants sued as Does are unknown to plaintiff.

- (1) ☒ Doe defendants (specify Doe numbers): 1 to 10 were the agents or employees of the named defendants and acted within the scope of that agency or employment.
- (2) ☒ Doe defendants (specify Doe numbers): 5 to 10 are persons whose capacities are unknown to plaintiff.

c. ☐ Information about additional defendants who are not natural persons is contained in Attachment 4c.d. ☐ Defendants who are joined under Code of Civil Procedure section 382 are (names):5. ☐ Plaintiff is required to comply with a claims statute, and

- a. ☐ has complied with applicable claims statutes, or
- b. ☐ is excused from complying because (specify):

6. ☐ This action is subject to ☐ Civil Code section 1812.10 ☐ Civil Code section 2984.4.

7. This court is the proper court because

- a. ☒ a defendant entered into the contract here.
- b. ☐ a defendant lived here when the contract was entered into.
- c. ☐ a defendant lives here now.
- d. ☒ the contract was to be performed here.
- e. ☐ a defendant is a corporation or unincorporated association and its principal place of business is here.
- f. ☐ real property that is the subject of this action is located here.
- g. ☐ other (specify):

8. The following causes of action are attached and the statements above apply to each (each complaint must have one or more causes of action attached):

- ☒ Breach of Contract
- ☐ Common Counts
- ☒ Other (specify): Fraud

9. ☐ Other allegations:

10. Plaintiff prays for judgment for costs of suit; for such relief as is fair, just, and equitable; and for

- a. ☒ damages of: \$ 26,600 plus \$200.00 a day from May 29, 2008
- b. ☒ interest on the damages
- (1) ☒ according to proof
- (2) ☐ at the rate of (specify): _____ percent per year from (date):
- c. ☒ attorney's fees
- (1) ☐ of: \$
- (2) ☒ according to proof.
- d. ☒ other (specify): Such other and further relief as this Court may deem just and proper.


11. ☐ The paragraphs of this pleading alleged on information and belief are as follows (specify paragraph numbers):

Date:

6/9/08

John J. Cullen

(TYPE OR PRINT NAME)



(SIGNATURE OF PLAINTIFF OR ATTORNEY)

(If you wish to verify this pleading, affix a verification.)

PLD-C-001(1)

SHORT TITLE: JOHN YUEN v. METRO FUEL, LLC

CASE NUMBER:

FIRST

(number)

CAUSE OF ACTION—Breach of Contract

ATTACHMENT TO ☒ Complaint ☐ Cross - Complaint

(Use a separate cause of action form for each cause of action.)

BC-1. Plaintiff (name): JOHN YUEN

alleges that on or about (date): June 15, 2007

a ☒ written ☐ oral ☒ other (specify): Written Modification on November 12, 2007 agreement was made between (name parties to agreement): JOHN YUEN and METRO FUEL, LLC☒ A copy of the agreement is attached as Exhibit A, or
☐ The essential terms of the agreement ☐ are stated in Attachment BC-1 ☐ are as follows (specify):

BC-2. On or about (dates): November 13, 2007

defendant breached the agreement by ☐ the acts specified in Attachment BC-2 ☒ the following acts (specify): Defendant failed to submit and complete inventory of the General Advertising Sign along with the \$560 fee per sign to cover the initial inventory processing and failed to "address all notices and seek their expeditious resolution".

BC-3. Plaintiff has performed all obligations to defendant except those obligations plaintiff was prevented or excused from performing.

BC-4. Plaintiff suffered damages legally (proximately) caused by defendant's breach of the agreement.

☐ as stated in Attachment BC-4 ☒ as follows (specify): \$26,600 as of May 29, 2008 and \$200 per day thereafter until the Advertising Signs are removed or the City of San Francisco Planning Department's Rules and Regulations are complied with.BC-5. ☒ Plaintiff is entitled to attorney fees by an agreement or a statute
☐ of \$
☒ according to proof.BC-6. ☒ Other: Such other and further relief as this Court may deem just and proper.

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PLD-C-001(3)

SHORT TITLE: JOHN YUEN v. METRO FUEL, LLC.	CASE NUMBER:
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SECOND

(number)

CAUSE OF ACTION—Fraud

ATTACHMENT TO ☒ Complaint ☐ Cross-Complaint

(Use a separate cause of action form for each cause of action.)

FR- 1. Plaintiff (name): JOHN YUEN

alleges that defendant (name): METRO FUEL, LLC

on or about (date): November 12, 2007

defrauded plaintiff as follows:

FR-2. ☒ Intentional or Negligent Misrepresentation

a. Defendant made representations of material fact ☐ as stated in Attachment FR-2.a ☒ as follows: The Defendant represented to the Plaintiff that the Defendant would "address all notices and seek their expeditious resolution" and would indemnify and hold harmless from any losses, claims, liabilities, fines, penalties or judgments arising out of any claims or cause of action proximately caused by the Defendant's posting of the signs including, without limitation, civil and criminal fines and impositions for violations of building codes and/or zoning codes, including, but not limited to, instant violations, incurred with respect to the signs.

b. These representations were in fact false. The truth was ☐ as stated in Attachment FR-2.b ☒ as follows: The Defendant did not "address all notices and seek their expeditious resolution" and has not indemnified and held harmless the Plaintiff from all losses and penalties arising out of in connections with the signs on Plaintiff's property.

c. When defendant made the representations,

☒ defendant knew they were false, or☐ defendant had no reasonable ground for believing the representations were true.

d. Defendant made the representations with the intent to defraud and induce plaintiff to act as described in item FIR-5. At the time plaintiff acted, plaintiff did not know the representations were false and believed they were true. Plaintiff acted in justifiable reliance upon the truth of the representations.

FR-3. ☒ Concealment

a. Defendant concealed or suppressed material facts ☐ as stated in Attachment FR-3.a ☒ as follows: The Defendant did not address all notices and seek their expeditious resolution and did not inform the Plaintiff that the Defendants were ignoring the City's requirements and were allowing penalties to accrue against the Plaintiff, and Plaintiff did not discover until on or about April 11, 2008.

b. Defendant concealed or suppressed material facts

☒ defendant was bound to disclose.☐ by telling plaintiff other facts to mislead plaintiff and prevent plaintiff from discovering the concealed or suppressed facts.

c. Defendant concealed or suppressed these facts with the intent to defraud and induce plaintiff to act as described in item IFIR-5. At the time plaintiff acted, plaintiff was unaware of the concealed or suppressed facts and would not have taken the action if plaintiff had known the facts.

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SHORT TITLE: JOHN YUEN v. METRO FUEL, LLC.

CASE NUMBER:

SECOND

(number)

CAUSE OF ACTION—Fraud

FR-4. ☒ **Promise Without Intent to Perform**

a. Defendant made a promise about a material matter without any intention of performing it ☐ as stated in Attachment FR-4.a ☒ as follows: On November 12, 2007, the Defendant promised to indemnify and hold harmless the Plaintiff and to "address all notices and seek their expeditious resolution". The Defendant has done nothing to address all the notices and seek their expeditious resolution and has caused damage to Plaintiff in the amount of \$26,600 plus \$200 a day until the signs are removed or the City requirements are complied with plus the reasonable attorney's fees and emotional distress.

b. Defendant's promise without any intention of performance was made with the intent to defraud and induce plaintiff to rely upon it and to act as described in item FR-5. At the time plaintiff acted, plaintiff was unaware of defendant's intention not to perform the promise. Plaintiff acted in justifiable reliance upon the promise.

FR-5. In justifiable reliance upon defendant's conduct, plaintiff was induced to act ☐ as stated in Attachment FR-5 ☒ as follows: The Plaintiff reasonably believed that the Defendant would "address all notices and seek their expeditious resolution"; and when Plaintiff received notice on or about April 11, 2008, the Plaintiff attempted on numerous occasions to contact Defendants, and Defendants have ignored the Plaintiff and has refused to communicate with the Plaintiff.

FR-6. Because of plaintiff's reliance upon defendant's conduct, plaintiff has been damaged ☐ as stated in Attachment FR-6 ☒ as follows: Plaintiff has been damaged in the sum of \$26,600 as of May 29, 2008, and damage continues at the rate of \$200 per day until the signs are removed or the City regulations are complied with. Further, Plaintiff has been damaged by emotional stress and strain caused by the continuing penalties and damages accruing against the Plaintiff.

FIR - 7. Other:

PLD-PI-001(6)

SHORT TITLE:
JOHN YUEN v. METRO FUEL, LLC

CASE NUMBER:

Exemplary Damages AttachmentPage 6ATTACHMENT TO ☒ Complaint ☐ Cross - Complaint

EX-1. As additional damages against defendant (name): METRO FUEL, LLC

Plaintiff alleges defendant was guilty of

- ☒ malice
☒ fraud
☒ oppression

as defined in Civil Code section 3294, and plaintiff should recover, in addition to actual damages, damages to make an example of and to punish defendant.

EX-2. The facts supporting plaintiff's claim are as follows:

The Defendant falsely and fraudulently with the malicious intent and purpose of inflicting pain and suffering upon the Plaintiff, failed to address all notices and seek their expeditious resolution and failed to comply with the City and County of San Francisco's requirements pursuant to Ordinance 140-06 and 200-06 and has allowed penalties to accrue against the Plaintiff in the amount of \$26,600 and continues to accrue at the rate of \$200.00 per day and despite their promise to do so continue to refuse to indemnify and hold harmless to Plaintiff and refuse to communicate with Plaintiff on said subject.

EX-3. The amount of exemplary damages sought is

- a. ☐ not shown, pursuant to Code of Civil Procedure section 425.10.
b. ☐ \$

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